

01.02.2024
Sl. No.14(DL)
srm

C.O. No. 4401 of 2023

Himangshu Saha

Versus

Birendra Kumar Bhowmik & Ors.

Mr. Manik Lal Poddar

...for the Petitioner.

Mr. Debashis Roy,
Mr. Somnath Maiti,
Mr. Soumyanil Maiti

...for Opposite Party No.1(a).

This revisional application has been filed challenging an order September 21, 2023 passed by the learned Judge, 10th Bench, City Civil Court at Calcutta, in Title Execution Case No.54 of 2013 arising out of Title Suit Nno.1662 of 1996.

The petitioner, who is the defendant No.5 is aggrieved by the order impugned on the ground that the application for stay of the execution was rejected on September 21, 2023, without considering the fact that the execution should not continue when the application for setting aside *ex parte* decree was pending. If the execution case continues, the proceedings taken out for setting aside the *ex parte* decree will become infructuous.

It appears that by an earlier occasion, a learned co-ordinate Bench of this Court had directed the execution case to proceed.

Under such circumstances, the revisional application is disposed of with a direction upon the learned court to complete the hearing of Misc. Case No.3140 of 2015 and deliver judgment within March 1, 2024. The grievance of both the parties will be met if the application under Order IX Rule 13 of the Code of Civil Procedure filed by the petitioner/defendant No.5 in the suit, is disposed of within the period mentioned hereinabove, as the execution case has been fixed on March 7, 2024 by the learned court below.

This order is being passed for the ends of justice so that the defendant No.5 gets an opportunity to contest the application for setting aside abatement, but the time limit should be considered to be peremptory.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)